

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for February 24, 2015

Convened by Minnesota DEED Vocational Rehabilitation Services

Meeting Details

Date: Tuesday, February 24, 2015

Time: 10:00 am – 3:00pm

Location: ProAct, Eagan, MN 55121

Chair: John Sherman, VRS Extended Employment Program Director

Facilitator: Holly Johnson, Lanterna Consulting, Inc. contracted through Management Analysis & Development, Minnesota Management and Budget

Advisory members (or alternates) in attendance: *Jeff Bangsberg, Laura Bealey, Tim Dickie, Steve Ditschler, Tim Hammond, Anita Kavitz, Jeremy Gurney, Nancy Huizenga, Holly Johnson, Karen Johnston, Clayton Liend, Rod Pederson, Dean Ritzman, John Sherman and John Sherwood-Gabrielson (joined at 1:15pm)*

Guests: *Leann Kleaver and Dan Mills, VRS Counselors*

Key Perspectives for EE Rule Revision Work

Throughout the process, advisory members are asked to keep a system wide view for the EE Rule Revision topic discussions. The five key perspectives are summarized as:

1. **Advocacy Organizations**
2. **Public Partners**
 - Local level - counties, municipalities, etc. e.g. Ramsey County
 - State level - agencies, etc. e.g. Department of Human Services (DHS), Minnesota Olmstead Plan
 - Federal level
3. **Extended Employment (EE) Providers**
4. **EE Workers**
 - Currently working
 - Eligible but not currently working
5. **VRS - EE Rule 'Owner' and Accountable Agency**
 - VRS EE team: John Sherman, Anita Kavitz and Wendy Keller
 - Other DEED and VRS staff

Welcome and Opening Remarks

The meeting was called to order. The facilitator Holly Johnson provided a brief overview of the meeting objectives and agenda. John Sherman introduced guest observers VRS Counselors Leann Kleaver and Dan Mills.

Advisory Session Objectives:

1. Working session focused on development of a new EE program funding model.
2. Gather key stakeholder perspectives and input to assist Minnesota DEED Vocational Rehabilitation Services in the EE Rule Revision process.
3. Continued exploration and discussion related to ADA, Olmstead and the Workforce Innovation and Opportunity Act (WIOA) and their combined implications for Minnesota's Extended Employment Rule revision.

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The advisory was reminded to review the draft January 27, 2015 session notes and asked to provide any edits by February 27, 2015 after which time the notes would be finalized.

Follow-up and Updates since the January 2015 Meeting

The U.S. Departments of Labor and Education are working to develop a set of regulations for implementation of WIOA under the aggressive timeline set forth in the legislation. Draft regulations were originally forecast for end of January 2015 however a revised draft release date has now been forecast for March 21.

John Sherman also provided a brief update on the EE legislative progress and the Governor's budget. To support the administrative hearing and technical processes related to the EE Rule Revision, John has received approval for an additional staff.

As of 8:20am this morning, draft bill SF1533 language was released from the Governor's office and is now available to the public. Jeff Bangsberg requested to have the draft bill sent to the advisory to share with others and John agreed. The draft was developed and informed by the EE Advisory conversations since December 2014. The draft includes language that opens the EE program process to include large medical institutional providers as well as introduces definitional updates as amended from WIOA such as informed choice and integrated settings. Upon release from the Governor's office, John was allowed to provide a copy to MOHR's lobbyist Shep Harris and MOHR members Karen Johnston and Steve Ditschler. Karen Johnston provided a brief update on the MOHR input activities over the past few days leading to her testimony during in the Senate Jobs policy committee.

John distributed a brief summary of the draft language modifications developed with MOHR and amended to the draft bill language for 'Article 4 Extended Employment Program Changes'. The advisory reviewed the draft language and asked questions for understanding and clarification.

Next steps in the legislative process include:

1. the draft language is introduced to members of the legislature to seek a bill co-author and seek a hearing.
2. the hearing provides an opportunity for interested parties to testify regarding the bill. Once VRS EE learns that the bill is up for hearing, we will notify the advisory committee.
3. the committee process for policy alone, is conducted in the Senate and the process for policy, including a fiscal note, are conducted in the House. Note: at this point the bill does not have 'fiscal note'.
4. once the bill passes through appropriated committees, then the language will likely be added to larger bills in each body.
5. if passed off the floor, then the bill goes to conference committee where sometimes the policy bills are run separately.

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6. if the bill is voted into state statute sometime before May then the rule writing process is anticipated to flow much smoother.

Karen Johnston inquired about the effective date if the bill becomes statute. John agreed that it is an important question and responded with the following: if the statute does not involve a fiscal note then it would likely become effective July 2015 however if the statute impacts policy and fiscal then it would likely be effective August 2015. Statute takes precedence over rule. He said that the effective date has not been developed and that it might make sense to consider the program benefits for statute and rule going into effect together possibly targeting July 2016 to minimize potential EE program service disconnects and disruptions. Nancy Huizenga raised a timing issue for language as it relates to Allina and implementation implications. John agreed to look into the issue.

Advisory comment on draft bill language: We see an issue between two federal policies being at cross purposes at the intersection of draft statute of integrated setting ($\leq 50\%$) with the federal Ability One contract requirements of the percentage of disabled persons in the program ($\geq 75\%$). The issues include the integration component as well as the rates paid for work.

Advisory comment on draft bill language: It appears that "what happens to community employment" is the policy question. One of our questions is where does the system provide for support to those with the most challenged skill sets? Tim Hammond noted that any funding model should move toward reduced services over time for many of the program participants and that those monies should then be made available to others for services. John stated that DEED and providers alike do not always know where program participants go with services and across other programs/funding sources.

As John wrapped up the updates portion of the meeting, Karen Johnston thanked him and VRS for the way they have provided transparency and opportunities for input into the EE Rule revision process by convening an EE Rulemaking Advisory Committee. She noted that MOHR is composed of a large number of organizations (100+) who provide a wide array of services each of whom have their own perspectives and constituents. She noted that Clayton Liend has been diligent in sending out information on the advisory's discussion to MOHR. He and the other MOHR representatives on the committee are also doing their best to assist other members in gaining a better understanding of the issues and work of this group and providing opportunities to ask questions and weigh in.

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Building a New Funding Model for the Extended Employment Program

Following the review of the draft statute language, John opened the working session focused on building a new funding model for the EE Program. He distributed copies of his 'Redesign of the EE Funding System 2/24/2015' presentation materials.

He began with a brief review of the **EE funding guidelines** previously developed and discussed by the advisory committee as summarized:

- Maintain a predictable performance-based funding system, including:
 - Reimburse hours of work performed by persons served
 - Differential reimbursement rates based on average hourly wage of persons served
 - Competitive employment is first priority for funding
- Capping non-competitive employment will not displace current persons served
- Downsizing of non-competitive employment models will be scheduled and predictable, and will demonstrate measured change over a reasonable time period
- Possible consideration for impact of inflation on reimbursement rates
- Incentives will be considered to facilitate/reward conversion

John also reviewed the advisory committee's consensus key points developed and endorsed at the January 27, 2015 meeting as it relates to a new EE funding model:

- Incremental elimination of Center Based Employment (CBE) within five years;
- Include both Center Based Employment (CBE) and Community Employment (CE) in the non-competitive fund, with different rates and two timelines;
- Sun setting one of the funds - center based;
- Capping non-competitive employment;
- After center based is reduced and ultimately eliminated from the EE program, the resources move to other services;
- Better tracking system will be vital to the new model
- The implications of the special wage certificate will impact timing for Community Employment (CE) based on what happens with the subminimum wage under WIOA regulations yet to be released.

John then provided an introduction to a draft funding model with a number of variables developed for discussion purposes only using 2014 rates as the basis. The model variations included assumptions using a) current rates, b) rates using Supported Employment as a percent of hourly wages (40%), c) rates using 50% of hourly wage (would require fiscal note to get enough resources to fund the model), and d) rates using 45% of hourly wage to try to address the funding level issue in (c).

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The afternoon session was focused on the topic of overproduction topic which began with the following Overproduction Key Points:

- Limited to Supported Employment
- Could be retroactive; i.e. funded from underproduction, like wage incentive
- Could adjust starting point for the next year
- Could be targeted to region or target populations

John asked the advisory for their thoughts on how to encourage new populations and new geographic areas into the system. He noted that the dollars could be targeted to support existing services. One of the big open questions the rule revision must address is how to distribute the overproduction. John said an argument for overproduction is that it might be used to incentivize organizations who currently provide for Supported Employment to increase capacity to serve.

Jeremy Gurney asked about the possibilities of prioritizing the use of monies to first support Supported Employment (SE) and fund SE overproduction. Any monies left then goes to a non-competitive 'pot of monies' to be distributed to other services. John said that such an approach would pose timing issues because of when we would know what's available to be distributed to noncompetitive. He stated that the primary purpose of EE is to fund Supported Employment and anything left over can be redistributed. The Minnesota Olmstead Plan is expected to increase the demand for Supported Employment. Tim Dickie noted that Olmstead is also about moving people from noncompetitive to competitive so the system should help incentivize that movement - just paying for more Supported Employment overproduction does not necessarily accomplish that. John asked the advisory about using overproduction as a mechanism to support the movement. Steve Ditschler reminded the advisory that we don't really know the actual level of overproduction occurring in the system because many organizations are not reporting it once they have used up their funding.

Rod Pederson asked if there are monies to allow new people into the system? Steve Ditschler asked about using monies for funding transition youth rather than overproduction given the increased emphasis on transition youth within WIOA and other policies. The committee discussed the potential benefits of reducing funding over time and seeing how change unfolds to monitor for unintended negative consequences. Rod also expressed concerns about the relative impact weight to metro vs. greater Minnesota as well as the skill levels of the populations being served. John said one possibility could be for the rule to include some provisions for funding overproduction targeted for specific disability groups and/or geographic regions.

Tim Hammond said that overproduction will occur at an unpredictable level however that does not impact the rates we will pay in the system. Anita Kavitz reminded the advisory to think about overproduction in terms of two phases: a) Overproduction for the current system we're in and during a transition period and b) on an ongoing basis

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once the transition period is complete. Do we make any accommodations for those doing overproduction knowing that the maximum we could ever fund is based on the underproduction? Which highlights the fact that currently everything is tied to under production. John added that there are CRP concerns that we are producing unreimbursed services for existing consumers and that we do not have any monies left to bring new people in to receive services through the EE program e.g. transition youth challenges. John stressed the fact that if we're already limited and there are no monies for reimbursement, then we cannot bring any new people into the system. As an example, John noted that last year there was a substantial amount of dollars from underproduction and that the dollars will be redistributed to providers with overproduction. There is a time lag that impacts our services and it bolsters an argument for a more effective distribution mechanism. Currently, the primary incentive for providers to report overproduction hours is that the provider may earn more wage incentive dollars.

Karen Johnston asked what if we took underproduction from Center Based Employment and Community Employment and automatically put it into Supported Employment since the long term goal is to fund Supported Employment? It would help to continue to shrink the pot without taking away from current consumers served. John and Rod noted that it sounded like a more equitable approach than some. Tim Hammond said he thought such an approach would be supported by Judge Frank. Jeff Bangsbers noted it would back up the talk with incentives. Anita countered that this strategy alone is similar to what we've been doing already and that it probably would not be sufficient by itself to affect the level of change directed by the Department of Justice and the Olmstead Decision.

Karen asked about combining such a strategy with the capping. John noted that there is a challenge in balancing help with overproduction for existing providers with ensuring funds for opportunities for new providers and to address unmet needs to expand the overall system capacity. Both sets of interests are valid.

Steve Ditschler asked if we would be better served by going to the legislature for new monies for unmet needs. John said that in his many years of experience with the legislature, it has been very seldom that outside groups have gone for new monies. In addition, VRS has not been able to ask for funds and historically the department has been limited in their ability to request program increases within the agency and Governor's budgets. Most requests from MACRO (now MOHR) were for rate increases. Realistically, funding new targeted populations has not been something either internal or external forces have achieved much success. They have seen some success for a few new populations in specialized areas such as IPS. And now there is another push to do more for Deaf and Hard of Hearing but neither of these efforts are attached to the Extended Employment program.

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Jeff Bangsberg asked if unmet needs can be met by current providers. John said yes however even those have uneven results. Anita asked the advisory for their ideas on how to help make dollars available for new services and new areas. The Department of Justice has been clear in its expectation that people should not be tracked into noncompetitive employment for the rest of their lives.

Laura Bealey shared that their CRP is focused on creating a clearer expectation with employers around individuals hired in the community employment program. MRCI is asking employers upfront to consider hiring an individual in community employment after 90 days. Laura said that a number of employers are receptive to this approach. She noted other hiring barriers for employees that tend to extend community employment: some employers are hiring no more than 99 people so they don't hit the 100 employee level requirement for health insurance. She said that Community Employment can be effective as a job tryout and that employers trust the CRP as a resource. It has been a strategy that addresses the "stay on a crew forever" issue and it helps with the transition process and direction.

The advisory committee continues to have significant concerns about individuals with the most significant disabilities who may not have the necessary skills to accomplish the tasks needed to achieve the Supported Employment level of services. There is a potential danger in losing the 'middle steps' of Community Employment that should be considered in the rule writing process. There is also value in earning good wages within a Community Employment service that should be considered as a good outcome. We need funding to support those services.

Tim Hammond challenged the committee to consider that if individuals have never been 'out in the community', then they would not necessarily choose to move or try integrated and community employment without more intentional experiences and encouragement. Tim noted that while the representative CRPs on the committee have been working hard to assist individuals with finding competitive employment in the most integrated settings, not all the providers have been proactive in encouraging individuals in the spirit of true informed choice.

Jeff Bangsberg agreed sharing that his parents were told he "would never get out of a nursing home". Jeff expressed his belief that we all have good intentions and that what we are discussing is about how are we going to do the best we can in the best interests of those we serve. Jeff said we need to give people the opportunity to experience different environments and give them employment opportunities in the community whenever we can. John said that we need to continue to learn more about the factors keeping people in less competitive environments.

Steve Ditschler noted that the transition to more integrated settings will be helped by the younger demographics. Individuals coming into the program from transition youth will not even be exposed to 'sheltered workshops' and many individuals currently in

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Center Based Employment are naturally aging out of the system. Advisory members noted that most younger parents have high expectations for their children's participation in employment and community experiences.

Recap of Advisory Committee Consensus and Key Points

The advisory committee reinforced the importance of communicating with EE program participants and stakeholders that the committee is strongly in favor of changes to non-competitive employment services occurring over a period of time rather than abruptly. Clearly, the revised rule must meet the requirements of Olmstead and WIOA. They are law and not optional. The hope of the advisory committee is that these requirements will be effectively met while providing sufficient support to transition impacted program participants and EE providers to more Supported Employment services over time.

One idea generated by the advisory committee for additional consideration:

- The Supported Employment pool of dollars would be permanently increased by the underperformance in both Center Based Employment and Community Employment. And those dollars moved are permanently allocated to Supported Employment rather than revert back in subsequent funding years. This idea aligns with the program's purpose of building Supported Employment. An open question remains on redistribution. We may or may not eliminate the RFP as an option for redistribution. It may used for rates. We may keep in place the voluntary option to move the dollars from noncompetitive to competitive employment services.

The advisory asked about continuing discussion at the next meeting regarding options to ratchet down the rate as we move through the transition period to give providers time to adjust. Starting at the current rate and then decreasing the rate over time to accelerate the movement towards Supportive Employment while retaining Community Employment as part of the informed choice range of services within the EE Program.

Looking towards the next advisory working session in March, John forecast more discussion on the community employment topic and potential time tables (proposed for 7 years). The advisory expressed continued support for a model that reduces funding to center based over five years to zero and continues to include Community Employment within a noncompetitive fund for the EE Program. John asked the advisory to review the legislative issues and draft language. Other topics for discussion include: increasing the rate for Supported Employment, discussion on keeping overproduction as an option within the system and how to deal with it in the context of re-establishing bases and handling unearned dollars each year.

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Wrap Up

In conclusion, John thanked the advisory committee for their work. He and Anita will move forward with the inputs provided to further develop draft models for the next meeting scheduled for March 17th.

Next Steps:

1. John will send an electronic copy of the draft statute language to the advisory committee.
2. The advisory agreed to continue proactive sharing and cascading of the work of the VRS EE Rule Revision Advisory Committee with other EE system members notably the membership of Minnesota Organization for Habilitation and Rehabilitation (MOHR) for the benefit of input and support for the revision.
3. The next advisory committee meetings will be as follows:
 - **Tuesday, March 17th**, 10:00am to 3:00pm
 - **Tuesday, April 21st**, 10:30am to 3:00pm
 - Hosted at Proact, 3195 Neil Armstrong Blvd, Eagan, MN 55121.
4. Preview for March 17, 2015 Working Session:
 - The next committee meeting is anticipated to delve into potential rates and capping for Community Employment as part of a new EE program funding model.
 - The committee will also talk further about potential incentives to assist in the transition and transformation of the program in alignment with Olmstead, Minnesota's Employment First Policy and the new Workforce Innovation and Opportunity Act (WIOA).

Meeting Adjourned

The meeting was adjourned at 3:00pm.